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In the Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,

Petitioner,

v.

ELLA WILLIAMS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC., AND THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC., AND THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*[1]

The American Trucking Associations, Inc. (ATA) is a trade association of motor carriers, state trucking associations, and national trucking conferences, created to promote and protect the interests of the trucking industry. ATA's membership includes more than 2,300 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA represents over 30,000 companies and every type and class of motor carrier operation in the United States. ATA regularly advocates the trucking industry's common interests before this Court and other courts.

The Chamber of Commerce of the United States (the Chamber) is the world's largest business federation representing an underlying membership of nearly 3,000,000 businesses and organizations of every size. Chamber members operate in every sector of the economy and transact business in all or nearly all of the United States, as well as in a large number of countries around the world. A central function of

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[1] The parties have consented to the filing of this brief; the written consents have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the *amici curiae*, their members, and their counsel made a monetary contribution to the preparation and submission of this brief.

the Chamber is to represent the interests of its members in important matters before the courts, Congress, and the Executive Branch. To that end, the Chamber has filed *amicus curiae* briefs in numerous cases that have raised issues of vital concern to the nation's business community.

The Alliance of Automobile Manufacturers, Inc. (Alliance) and the Association of International Automobile Manufacturers (AIAM) are non-profit national trade organizations whose member companies are principally engaged in the production and sale of motor vehicles. They include all of the major distributors of motor vehicles in the United States market.[2]

The issues at stake in this case are of direct concern to *amici* and their members. *Amici* strongly support, and are deeply committed to, equality of opportunity for all persons, and believe that discrimination in all forms should be eliminated from the workplace. At the same time, *amici*'s members, as employers of millions of workers, have a large stake in ensuring that the provisions of the Americans With Disabilities Act (ADA) are applied fairly and in a manner consistent with congressional intent.

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[2] The members of the Alliance are BMW Group, DaimlerChrysler Corp., Fiat Auto S.p.A., Ford Motor Co., General Motors Corp., Isuzu Motors America, Inc., Mazda North America Operations, Mitsubishi Motor Sales of America, Inc., Nissan North America, Inc., Porsche Cars North America, Inc., Toyota Motor North America, Inc., Volkswagen of America, Inc., and Volvo Cars of North America.

The members of AIAM are American Honda Motor Co., Inc., American Suzuki Motor Corp., Daewoo Motor Co., Ltd., Hyundai Motor America, Isuzu Motor America, Inc., Mitsubishi Motor Sales of America, Inc., Saab Cars USA, Inc., Subaru of America, Inc., and Toyota Motor Sales USA, Inc.

In ruling that an impairment that causes difficulty only in the performance of particular work-related manual tasks constitutes a disability, the Sixth Circuit has misconstrued the ADA's definition of "disability." At odds with congressional intent, the Sixth Circuit's construction would bring a broad additional segment of the workforce within the protection of the ADA, imposing unwarranted costs on employers while doing little to advance the ADA's goal of increasing opportunities for the severely impaired. *Amici* have strong interests in establishing a fair and workable standard for defining "disability" that encompasses only those persons who are truly limited in a major life activity.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Sixth Circuit found that Ella Williams had a "disability" within the meaning of the ADA because she is unable to perform certain work-related manual tasks that "require the grasping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." Pet. App. 4a. The court's ruling that such a narrow restriction of manual function is a "disability" ignores Congress's intent that the ADA protect a limited class of individuals with severely restrictive impairments, and suggests instead that employers must consider accommodation of *all* impairments, however minor. The Sixth Circuit's sweeping and unwarranted expansion of the ADA's protected class should be reversed.

When Congress enacted the ADA, it purposefully limited the protections of the Act to individuals with impairments that "substantially limit[] one or more of the major life activities" of such individuals. By selecting that definition of "disability," Congress focused its legislative efforts on a severely disadvantaged group that previously had been marginalized both socially and economically. Congress had no intention of regulating all employment decisions based on an employee's

physical characteristics; the Act leaves undisturbed the relationship between employers and employees with minor impairments. Limitation of membership in the ADA's protected class was a crucial corollary to the Act's imposition on employers of an affirmative obligation to make jobs accessible to qualified individuals with disabilities where feasible.

The decision below flouts the legislative intent to limit the protected class to persons whose impairments significantly restrict their functioning as compared with average Americans. It is undisputed that Williams can perform many manual tasks, including those necessary to engage in the normal activities of daily living. Her manual impairment restricts her only from performing a specific set of repetitive, job-related tasks – and Williams presented no evidence that this impairment would preclude her from working generally, or even would prevent her from performing a broad class of jobs. Under these circumstances, the court of appeals clearly erred in concluding that Williams' manual impairment constituted a disability. Indeed, the decision below would transform the ADA from a statute that makes limited affirmative demands of employers in order to allow individuals with disabilities to participate fully in the economy into one that requires employers to consider accommodating any impairment that makes an employee or applicant less than ideally suited for a particular job.

ARGUMENT

A. Congress Intended To Extend The Extraordinary Affirmative Obligations Imposed By The ADA Only To The Limited Group Of Persons Having Impairments That Are Substantially Limiting.

1. In enacting the ADA, Congress intended to bring the "discrete and insular minority" of disabled Americans into the mainstream of society and to facilitate their full participation in the economy. 42 U.S.C. § 12101(a)(7). In its statement of findings supporting the adoption of the ADA, Congress emphasized that the disabled, "as a group, occupy an inferior status in our society, and are extremely disadvantaged socially, vocationally, economically, and educationally." *Id.* § 12101(a)(6). According to Congress, discrimination against the disabled "denies people with disabilities the opportunity to compete on an equal basis * * * and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity." *Id.* § 12101(a)(9). Accordingly, the chief goal of the ADA was "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Id.* § 12101(b)(1).

Consistent with its stated goals, Congress limited the ADA's protections to those persons whose exclusion from the economy was the focus of legislative concern. Unlike statutes that prohibit employers from making *any* employment decisions based upon characteristics such as race or gender, the ADA does not forbid all consideration by employers of a worker's physical characteristics, including their impairments. "By its terms, the ADA allows employers to prefer some physical characteristics over others and to establish physical criteria." *Sutton* v. *United Airlines, Inc.*, 527 U.S. 471, 490 (1999). In keeping with the congressional goal of ending discrimination against persons *severely* disadvantaged by their actual or perceived physical or mental deficits, the ADA's protections extend only to persons who have a physical or mental impairment "that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2)(A).[3] That definition is intended to limit

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[3] The ADA also applies to individuals who have a record of having such an impairment (*id.* § 12102(2)(B)), or are regarded as having such an impairment (*id.* § 12102(2)(C)). Those parts of the definition of "disability" are not at issue in this case.

the ADA's coverage to "only a limited class of persons – individuals who suffer from impairments significantly more severe than those encountered by the average person in every-day life." *Sweet* v. *Electronic Data Sys., Inc.*, 1996 WL 204471, *4 (S.D.N.Y. Apr. 26, 1996). The Act was not meant to disturb the employment relationship between employers and individuals who do not fall within that protected class.

Thus, Congress did not interfere with the employer's right to make employment decisions based on physical characteristics that are not impairments; under the ADA, "an employer is free to decide that physical characteristics or medical conditions that do not rise to the level of an impairment – such as one's height, build, or singing voice – are preferable to others." *Sutton*, 527 U.S. at 490. Congress also did not interfere with the employer's right to make decisions based on impairments that do not rise to the level of disability; the employer is "free to decide that some limiting, but not *substantially* limiting, impairments make individuals less than ideally suited for a job." *Id.* at 490-491.

Accordingly, without raising any issue under the ADA, an employer may refuse to give a job on an assembly line to a woman of below-average height who is too short to reach the conveyor belt; "normal deviations in height, weight, or strength that are not the result of a physiologic disorder are not impairments." EEOC Directive Transmittal: *Executive Summary of EEOC Compliance Manual Section 902*, at 902-11 (Mar. 14, 1995) (No. 915.002). Without involving the ADA, a park service may employ a hiring standard for guides that excludes a job applicant who can walk ten miles, but not fifteen miles, because of a knee impairment; that impairment "does not substantially limit his ability to walk." *Id.* at 902-17. And an airline may refuse to hire a pilot whose uncorrected vision is 20/200 but who sees well with glasses; although it may prevent her from getting that job, her impairment does not substantially limit her major life activities because, in its corrected state, her impairment allows her to function as well as average Americans. *Sutton*, 527 U.S. at 488.

When it enacted the ADA, therefore, Congress expected that some workers having some physical limitations would continue to negotiate the job market without any help from the ADA. The ADA was intended to intrude upon employment decisions only when they affect individuals whose impairments significantly restrict their ability to function as compared to the average working American. See 29 C.F.R. §1630.2(j)(1)(ii) (defining "substantially limit[ed]" as "[s]ignificantly restricted" in ability as compared to "the average person in the general population").

2. These limitations on the ADA's coverage accord with both the Act's central goal – bringing an historically disadvantaged group into the mainstream of society – and its method of achieving that goal. "Unlike other statutes prohibiting discrimination in employment, the ADA requires more than just equal treatment." L. Goddard, *Searching for Balance in the ADA: Recent Developments in the Legal and Practical Issues of Reasonable Accommodation*, 35 IDAHO L. REV. 227, 230 (1999) (footnote omitted). "In recognition of the fact that equal treatment does not lead to inclusion in the mainstream for many people with disabilities" (B. Tucker, *The ADA's Revolving Door: Inherent Flaws In the Civil Rights Paradigm*, 62 OHIO ST. L. J. 35, 344 (2001)), the ADA also requires employers to take *affirmative* steps to make jobs accessible to individuals with disabilities. Congress imposed these significant affirmative obligations on employers only because the expected benefit – the integration of a previously excluded group into the economy – was so substantial.

The most significant duty that the ADA imposes on employers is the obligation to provide "reasonable accommodations" to workers with disabilities. The ADA defines unlaw-

ful discrimination to include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless * * * the accommodation would impose an undue hardship on" the employer. 42 U.S.C. § 12112(b)(5)(A). The statute also makes it unlawful to deny a job opportunity to an applicant or employee because of the need "to make reasonable accommodation to the physical or mental impairments of the employee or applicant." *Id.* § 12112(b)(5)(B).

Congress anticipated that the very process of determining whether a reasonable accommodation is available can be a significant burden. The House Report explained that, when making employment decisions about a person with a disability, the employer would have to "determine whether a reasonable accommodation would enable the person with the disability to perform the essential functions of the job without imposing an undue hardship on the business." H.R. Rep. No. 101-485(II), 101st Cong., 2 Sess., at 62 (1990). This decision, it was expected, would be made "on the particular facts of the individual case." *Ibid.* Congress recommended that "[a] problem-solving approach * * * be used to identify the particular tasks or aspects of the work environment that limit performance and to identify possible accommodations that will result in a meaningful equal opportunity for the individual with a disability." S. Rep. No. 101-116, 101st Cong., 1st Sess., at 34 (1989).

Congress clearly understood, moreover, that the assessment of whether accommodation is possible would not always be easy. "[W]hen the appropriate accommodation is not obvious" because a job applicant is not familiar with the details of the job and the employer is not familiar with the applicant's disability, the House Report suggests that the employer "consider four informal steps to identify and provide an appropriate accommodation" (H. R. Rep. No. 101-485(II), at 66), including:

- "identify[ing] the abilities and limitations of the individual" and "identify[ing] job tasks or work environment that limit the individual's effectiveness or prevent performance";
- "identify[ing] possible accommodations" by consulting with the individual and with appropriate agencies;
- "assess[ing] the reasonableness of each [possible accommodation] in terms of effectiveness and equal opportunity";
- and "implement[ing] the accommodation that is most appropriate for the employee and the employer."

Ibid. See also S. Rep. No. 101-116, at 34 (same). See generally H. Cominsky, *Guidelines for Successfully Engaging in the Interactive Process to Find a Reasonable Accommodation Under the Americans with Disabilities Act*, 13 LABOR LAWYER 499 (Winter/Spring 1998) (describing process of selecting a reasonable accommodation).

To be sure, an employer may decline to provide an accommodation if doing so would create an "undue hardship," but establishing that defense is neither straightforward nor certain. According to the EEOC, "[g]eneralized conclusions will not suffice to support a claim of undue hardship." EEOC Notice: *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*, at 54 (Mar. 1, 1999) (No. 915.002). "Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense." *Ibid.* This individualized assessment must take into account a list of factors set forth in the statute and regulations, including "the nature and cost of the accommodation needed" and "the overall financial resources of the covered

entity." 42 U.S.C. § 12111(10)(B)(i)-(iii); see also 29 C.F.R. 1630.2(p). If a court later decides that the employer's analysis was wrong – and that the accommodation should have been provided – the employer may be liable to the employee for damages.

3. Because of the extraordinary affirmative obligations imposed on employers when dealing with persons with disabilities, deciding who is covered by the statute is of crucial importance. As two commentators recently observed, "[t]he definition of disability is the ballgame." S. Issacharoff & J. Nelson, *Discrimination with a Difference: Can Employment Discrimination Law Accommodate the Americans with Disabilities Act?*, 79 N.C. L. REV. 307, 332 (2001). The threshold determination of whether an individual is disabled is crucial in two respects.

First, as explained above, the classification of an applicant or employee as disabled transforms that person's relationship to the employer. If a non-disabled employee is not ideally suited to perform a particular job, the employer is free to give the job to another person who, in the employer's view, better "fits" the job. In contrast, when dealing with an individual with a disability, the employer may have to consider modifying non-essential job functions to enable that individual to perform the job – in effect, changing the job to "fit" the employee. The breadth of the definition of "disability" thus determines how sweeping a change the ADA will make in the American workplace – and how much or little of the employers' freedom to hire and fire at will be preserved.

Defining "disability" properly also is critically important in keeping the lid on ADA litigation. Taking seriously the threshold determination of who is disabled is the best way to avoid protracted litigation over non-meritorious claims, because the existence of a disability is often capable of resolution by summary judgment. See, *e.g.*, *Williams* v. *Channel Master Satellite Sys., Inc.*, 101 F.3d 346, 349 (4th Cir. 1996)

(holding "as a matter of law" that a 25-pound restriction on lifting does not constitute a disability). "[O]nce a person is deemed disabled," however, "the parties then must litigate at substantial cost the issues of reasonable accommodation, business necessity, and qualification standards." Issacharoff & Nelson, *supra*, 79 N.C. L. REV. at 318 (footnotes omitted). Thus, "allowing cases to proceed to the reasonable accommodation inquiry pushes inexorably toward the fact-intensive case-by-case analysis" (*id.* at 337) that cannot easily be resolved on motion for summary judgment. See, *e.g.*, *Equal Employment Opportunity Comm'n* v. *United Parcel Serv., Inc.*, 249 F.3d 557 (6th Cir. 2001) (per curiam) (summary judgment inappropriate on claim that employer failed to offer reasonable accommodation for employee's severe allergies); *Feliberty* v. *Kemper Corp.*, 98 F.3d 274 (7th Cir. 1996) (employer was not entitled to summary judgment on reasonable accommodation merely because it had provided the employee's requested accommodation). Furthermore, once a plaintiff has demonstrated the existence of an accommodation that would allow him or her to perform the job, the employer must meet a significant burden to persuade the fact-finder that providing the accommodation would be an undue hardship. See Goddard, *supra*, 35 IDAHO L. REV. at 242-246 (discussing cases defining employer's burden in establishing undue hardship).

B. The Sixth Circuit's Holding That Difficulty In Performing Manual Tasks Associated With A Particular Job Substantially Limits A Major Life Activity Would Effect A Sweeping Expansion Of The ADA's Coverage That Is Inconsistent With Congressional Intent.

The Sixth Circuit ruled that a plaintiff can establish the existence of a disability by demonstrating that he or she has difficulty performing the manual tasks associated with certain jobs. That ruling flouts the congressional intention to

limit the coverage of the ADA to persons with severely limiting impairments, would transform the employment relationship by making the employer modify its workplace to accommodate virtually all of the physical idiosyncracies of its workers, and would open the floodgates to future litigation under the ADA. Not surprisingly, the decision is at odds both with this Court's prior decisions and those of many Courts of Appeals. The Sixth Circuit's misguided decision should be forcefully rejected.

1. As described by the majority opinion, the issue in this case was "whether plaintiff's physical difficulties in using her hands, arms and shoulders, as required by her new job within paint inspection, constitute a 'disability.'" Pet. App. 2a-3a. The court considered only whether Williams was substantially limited in the major life activity of "performing manual tasks." *Id.* at 4a. According to the Sixth Circuit, the plaintiff could establish the existence of a disability by demonstrating an impairment causing difficulty in "a 'class' of manual activities affecting the ability to perform tasks at work." *Ibid.*

The court of appeals acknowledged that Williams can perform "a range of isolated, non-repetitive manual tasks performed over a short period of time" – including "tending to her personal hygiene or carrying out personal or household chores." *Ibid.* As the dissent pointed out, moreover:

> [T]he record evidence shows that Williams can perform many manual tasks, beginning, most obviously, with the wiping task that she had already been doing prior to her newest assignment. In addition, the record shows that she can perform the manual tasks of brushing her teeth, laundering her clothes, and doing some driving.

Pet. App. 9a. Nevertheless, the majority ruled that Williams "crosses the threshold into the protected class of individuals under the ADA" because her impairments "prevent her from

doing the tasks associated with certain types of manual assembly jobs, manual product handling jobs and manual building trade jobs (painting, plumbing, roofing, etc.) that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." *Id.* at 4a. In other words, although Williams could perform a broad range of manual tasks, the court found her disabled because she was unable to perform certain manual tasks associated with specific jobs.

As explained above, the ADA's definition of "disability" is intended as a gatekeeper; it identifies the *limited* set of individuals who fall within the protected class and thus are entitled to the accommodation they need in order to perform a particular job. By finding Williams to be disabled *because* she is unable to perform the manual tasks required for a specific job, the Sixth Circuit turned the definition of disability on its head. Under the court of appeals' circular reasoning, the need for an accommodation itself creates the entitlement to one. And that approach, rather than ensuring the continued vitality of the ADA's gatekeeper, opens the floodgates.

2. The Sixth Circuit's decision cannot be squared with Congressional intent, as discerned by this Court and many lower courts. First, as discussed above, Congress made it clear that not just *any* impairment qualifies as a disability; only persons having impairments that "substantially limit" the performance of a major life activity are covered by the ADA. Even non-trivial impairments do not count as disabilities if the affected individual "can perform the normal activities of daily living." *Ray* v. *Glidden Co.*, 85 F.3d 227, 229 (5th Cir. 1996) (impairment causing restriction on repetitive heavy lifting not a disability); see also, *e.g.*, *Kelly* v. *Drexel Univ.*, 94 F.3d 102, 108 (3d Cir. 1996) (hip impairment causing plaintiff to limp and experience pain was not a substantial limitation on the major life activity of walking); *Sweet*, 1996 WL 204471, at *1, *6 (although plaintiff's vision dysfunction "has affected his daily life," it was not a disability be-

cause "[v]ision problems * * * are commonplace"). Thus, under the ADA, the employer remains "free to decide" that such impairments "make individuals less than ideally suited for a job." *Sutton*, 527 U.S. at 490-491. More significantly in this case, the employer has no statutory obligation to make jobs accessible to persons with such non-disabling impairments.

Against this backdrop, it is plain that Williams is not substantially limited in performing manual tasks. She can perform "a range" of manual tasks: she can "tend[] to her personal hygiene [and] carry[] out personal [and] household chores" (Pet. App. 4a), and she even can perform *some* assembly line jobs at the Toyota plant (*id.* at 9a). Indeed, it appears that the *only* manual tasks that Williams *cannot* perform are those that involve "the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time" – tasks which she had no occasion to perform *except* at certain jobs at Toyota's plant. *Id.* at 4a. Because Williams thus can perform the manual tasks necessary to accomplish "the normal activities of daily living" (*Ray*, 85 F.3d at 229), she is not substantially restricted in that major life activity.

Put another way, Congress did not intend that difficulty performing tasks of a kind that most Americans never have occasion to perform would trigger the ADA's protections. No other conclusion comports with the ADA's purpose of helping persons substantially less functional than most Americans, while minimizing its general intrusion into the employment relationship.

Second, and relatedly, Congress did not intend to confer protected status on individuals whose impairments merely make them unable to perform a particular job. In enacting the ADA, Congress did not aim to ensure equal access to all jobs or to provide redress for the "isolated mismatch of employer and employee." *Forrisi* v. *Bowen*, 794 F.2d 931, 935 (4th

Cir. 1986) (interpreting the Rehabilitation Act); see also *Welsh* v. *City of Okla.*, 977 F.2d 1415, 1417 (10th Cir. 1992) (interpreting the Rehabilitation Act) (major life activity of working "does not necessarily mean working at the job of one's choice"). Legislative efforts instead were focused on persons who, without statutory protection, might be largely if not entirely foreclosed from the job market. See, *e.g.*, S. Rep. No. 101-116, at 9 (explaining that "[t]wo-thirds of all disabled Americans * * * are not working at all," yet "say that they want to work"). Thus, many courts have ruled that individuals with impairments that render them unfit for *some* jobs are not thereby admitted into the ADA's protected class. See, *e.g.*, *Gelabert-Ladenheim* v. *American Airlines, Inc.*, _ F.3d _, 2001 WL 640175 (1st Cir. June 12, 2001) (plaintiff whose carpel tunnel syndrome imposed a 20% impairment on both hands that rendered her unable to lift more than twenty pounds, push or pull more than twenty pounds, sit or stand longer than eight hours, or type more than one to two hours without a break, and caused her some pain and difficulty in performing her daily activities and household chores was not disabled); *Williams*, 101 F.3d at 349 (25-pound lifting restriction was not a substantial limitation on a major life activity, "particularly when compared to an average person's abilities"); *Aucutt* v. *Six Flags Over Mid-America, Inc.*, 85 F.3d 1311, 1319 (8th Cir. 1996) (25-pound lifting restriction stemming from heart condition did not substantially impair plaintiff's ability to work); *Ray*, 85 F.3d at 229 (impairment that prevented repetitious lifting of containers did not substantially limit major life activity of working); *Dutcher* v. *Ingalls Shipbuilding*, 53 F.3d 723, 727 (5th Cir. 1995) (arm impairment that prevented plaintiff from climbing was not a substantial limitation of a major life activity of working); *Jasany* v. *United States Postal Serv.*, 755 F.2d 1244, 1250 (6th Cir. 1985) (postal worker whose strabismus (crossed eyes) made it difficult for him to operate mail sorting machine was not disabled under the Rehabilitation Act).

Indeed, the agency charged with enforcing the ADA considers impairments that substantially affect *only* work-related activities to constitute disability only in limited circumstances. As this Court recognized in *Sutton*, under EEOC guidelines, "[t]o be substantially limited in the major life activity of working, * * * one must be precluded from more than one type of job, a specialized job, or a particular job of choice." 527 U.S. at 492.[4] According to the regulations, with respect to the major life activity of working, the term "substantially limits" means "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities." 29 C.F.R. § 1630.2(j)(3)(i). These regulations attempt to respect the congressional expectation that physical disqualification from some jobs does not automatically trigger the ADA.

Because her limitations manifest themselves meaningfully *only* in the performance of her job, Williams' most plausible claim would appear to be that she is substantially limited in the major life activity of working. Indeed, in most ADA cases involving carpel tunnel syndrome, the battle over whether the plaintiff has a disability is fought on that front. See, *e.g.*, *Gelabert-Ladenheim*, 2001 WL 640175, at *4; see generally K. Small, *The Americans with Disabilities Act: Are Your Wrists Protected?*, 23 J. CORP. L. 325, 335-340 (Winter 1998). This is likely because the syndrome cannot ordinarily be shown to restrict any other "major life activity." Here, Williams did not present the evidence needed to support a "working" claim; and the court of appeals seemed loath to confront the issue, which it called a "difficult concept." Pet. App. 5a.

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[4] In *Sutton*, this Court assumed without deciding that working is a major life activity. *Ibid.*

By finding Williams significantly restricted in performing manual tasks merely because she has difficulty with certain tasks associated with particular jobs, however, the court has simply done an end-run around the requirements for demonstrating substantial limitation in working. Nothing about Williams' case suggests that she had anything other than a run-of-the-mill "working" claim, yet she failed to present evidence demonstrating significant restriction, as compared with the average person, as to a broad class of jobs. Williams should not be allowed to avoid the consequences of that failure simply by bootstrapping her insubstantial work-related restrictions into a substantial limitation in the different life activity of performing manual tasks.

3. If allowed to stand, the Sixth Circuit's overly broad construction of the ADA's definition of "disability" will have significant consequences for employers that Congress did not intend. Most fundamentally, when faced with an employee or job applicant who contends that he or she needs an accommodation to perform a job, it will be far more difficult for an employer to conclude that the employee or applicant is not protected by the ADA. Until the Sixth Circuit's ruling, an individual seeking an accommodation was required to demonstrate to the employer the existence of an impairment that substantially limits him or her *independently* of the job at issue. See, *e.g.*, *Taylor* v. *Pathmark Stores, Inc.*, 177 F.3d 180, 186-187 (3d Cir. 1999) (individual who "can carry out most regular activities that require standing and walking, even though he may not be able to perform Pathmark's jobs without accommodation," was not disabled). Under the decision below, however, an employee or applicant may claim entitlement to an accommodation when he or she has difficulty performing *only* the job that he or she wants. This would transform the ADA from a statute that makes limited affirmative demands of employers to achieve the laudable goal of integrating the disabled into the labor market into one that requires accommodation by the employer of all impairments.

An example may suffice to demonstrate the unwarranted costs that this regime might impose on employers. Imagine that a worker applies and is hired for an assembly line job that requires rotation among four tasks. After a week on the job, the worker discovers that two of the four tasks aggravate an old football injury and cause pain and inflammation in his shoulder. After obtaining confirmation from a doctor that the shoulder impairment (although previously irrelevant to the worker's life) is permanent, the worker requests that the employer modify the rotation system to allow him to perform only two of the tasks. Under the employer's previous understanding of the ADA, that request could be refused without further analysis: a worker is not disabled merely because he or she cannot perform a particular job. Under the decision below, however, the worker might well have an argument that he is substantially limited in performing manual tasks. The employer would thus have to engage in the laborious process of deciding whether the requested accommodation was "reasonable" and/or would impose "undue hardship" – and also would have to attempt to predict whether a court would agree with the employer's analysis.

Modifying the hypothetical slightly makes the intrusion into the employment relationship even more clear. Suppose that a job *applicant* knew that her minor shoulder impairment would permit her to perform only two of the four tasks involved in an assembly line job. Under the Sixth's Circuit's construction of the ADA, the applicant might be deemed to have a "disability," and the prospective employer would be faced with having to decide whether declining to hire her, and instead hiring workers who could easily perform all four tasks, would be deemed discrimination under the ADA.[5]

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[5] Employers in other industries would face the same dilemma. For example, a trucking company might face a request for accommodation from a driver with arthritis who could easily handle deliveries over relatively short distances, but whose impairment makes it difficult for him to grip a steering wheel during long-haul trips without special equipment or rest periods. Under the Sixth Circuit's definition, the driver's difficulties in performing the manual tasks specific to long-distance trucking might be deemed a "disability."

Inevitably, therefore, adoption of the Sixth Circuit's approach would shift the balance in the workplace toward requiring more accommodation of relatively minor impairments. This transformation would not come without cost. For instance, the employer in the above hypothetical examples, seeking to avoid litigation, might simply decide to end or limit the system of worker rotation among tasks. But that system may have had value both to the employer and to employees – allowing workers to avoid boredom, maximize their skills, and vary their tasks to avoid new repetitive stress injuries, while giving employers the benefits of a well-trained and flexible workforce. And the compensating benefits of eliminating that useful system may not be very significant; the workers whose impairments were accommodated might well have found other jobs, more suited to them physically, without serious difficulty.

The Sixth Circuit's approach also may weaken the incentives for self-selection that currently minimize the ADA's intrusion into the workplace. Because the ADA does not assist individuals with impairments that prevent them from performing only a narrow category of jobs, workers with such impairments must focus their efforts on training for and obtaining jobs in which their impairments do not disadvantage them. Under the Sixth Circuit's interpretation, however, workers would not be discouraged from actively seeking jobs for which they were particularly *ill*-suited, because any physical problems impairing their performance of work-related tasks would likely trigger the ADA.

The decision below thus threatens to transform the ADA from a statute that protects a "discrete and insular minority" of severely impaired individuals to one that requires accommodation of all impairments. It is contrary to the intent of Congress and should be reversed.

CONCLUSION

The judgment of the Sixth Circuit should be reversed.

Respectfully submitted.

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